

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

ALPHA PHI ALPHA FRATERNITY INC.
et al.,

Plaintiffs,

v.

BRAD RAFFENSPERGER, in his official
capacity as Secretary of State of Georgia,

Defendant.

CIVIL ACTION FILE
NO. 1:21-CV-5337-SCJ

COAKLEY PENDERGRASS et al.,

Plaintiffs,

v.

BRAD RAFFENSPERGER, in his official
capacity as the Georgia Secretary of State,
et al.,

Defendants.

CIVIL ACTION FILE
NO. 1:21-CV-5339-SCJ

ANNIE LOIS GRANT et al.,

Plaintiffs,

v.

BRAD RAFFENSPERGER, in his official
capacity as the Georgia Secretary of State,
et al.,

Defendants.

CIVIL ACTION FILE
NO. 1:22-CV-122-SCJ

JOINT PRETRIAL ORDER

1.

There are no motions or other matters pending for consideration by the Court except as noted:

By Plaintiffs and Defendants: Other than any pretrial motions which may be filed pursuant to the Court's scheduling order, there are no pending motions in this case.

2.

All discovery has been completed, unless otherwise noted, and the Court will not consider any further motions to compel discovery. (Refer to LR 37.1B). Provided there is no resulting delay in readiness for trial, the parties shall, however, be permitted to take the depositions of any persons for the preservation of evidence and for use at trial.

By Plaintiffs and Defendants: All discovery has been completed in this case.

3.

Unless otherwise noted, the names of the parties as shown in the caption to this Order and the capacity in which they appear are correct and complete, and there is no question by any party as to the misjoinder or non-joinder of any parties.

By Plaintiffs: There are no issues regarding the names of the parties and joinder.

By Defendants: The parties are properly named in the caption of this Order.

4.

Unless otherwise noted, there is no question as to the jurisdiction of the court; jurisdiction is based upon the following code sections. (When there are multiple claims, list each claim and its jurisdictional basis separately.)

By Plaintiffs: There is no question regarding this Court's jurisdiction. This Court has jurisdiction over this action pursuant to 42 U.S.C. §§ 1983 and 1988 and 28 U.S.C. §§ 1331, 1343(a)(3) and (4), and 1357.

By Defendants: Defendants assert that this Court lacks jurisdiction over Plaintiffs' Voting Rights Act claims because (1) the claims must be heard by a three-judge court pursuant to 28 U.S.C. § 2284 and (2) Section 2 of the Voting Rights Act does not permit an action to be filed by private parties. This Court would otherwise have jurisdiction pursuant to 52 U.S.C. §10301 and 28 U.S.C. § 1331.

5.

The following individually-named attorneys are hereby designated as lead counsel for the parties:

Pendergrass and Grant Plaintiffs: Abha Khanna, Joyce Gist Lewis

Alpha Phi Alpha Plaintiffs: Sophia Lin Lakin, Rahul Garabadu, and Debo Adegbile

Defendants: Bryan P. Tyson, Bryan Jacoutot

6.

Normally, the plaintiff is entitled to open and close arguments to the jury. (Refer to LR39.3(B)(2)(b)). State below the reasons, if any, why the plaintiffs should not be permitted to open arguments to the jury.

By Plaintiffs and Defendants: This case will not be tried before a jury. Plaintiffs request the opportunity to present opening and closing arguments to the Court.

7.

The captioned case shall be tried (____) to a jury or (X) to the court without a jury, or (____) the right to trial by jury is disputed.

8.

State whether the parties request that the trial to a jury be bifurcated, i.e. that the same jury consider separately issues such as liability and damages. State briefly the reasons why trial should or should not be bifurcated.

Plaintiffs' and Defendants' Statement: This case will be tried to the court and the parties do not request a bifurcated trial.

9.

Because this case will be tried to the Court, the parties have not attached a list of questions for the Court to propound to the jury concerning their legal qualifications to serve.

10.

Because this case will be tried to the Court, the parties have not attached a list of questions for the Court to propound to jurors on voir dire examination.

11.

Because this case will be tried to the Court, the parties have no voir dire questions or corresponding objections.

12.

Because this case will be tried to the Court, the parties are not requesting any strikes.

13.

State whether there is any pending related litigation. Describe briefly, including state and civil action number.

Five related cases challenging the redistricting plans enacted in 2021 by the Georgia General Assembly remain pending:

- *Alpha Phi Alpha Fraternity, Inc. et al. v. Raffensperger*, No. 1:21-cv-05337-SCJ;
- *Pendergrass et al. v. Raffensperger et al.*, No. 1:21-cv-05339-SCJ;

- *Grant et al. v. Raffensperger et al.*, No. 1:22-cv-00122-SCJ;
- *Common Cause v. Raffensperger*, No. 1:22-cv-00090-ELB-SCJ-SDG; and
- *Georgia State Conference of the NAACP v. Georgia*, No 1:21-cv-05338-ELB-SCJ-SDG.

14.

Attached hereto as Attachment “C-1” for the *Pendergrass* Plaintiffs, Attachment “C-2” for the *Grant* Plaintiffs, and Attachment “C-3” for the *Alpha Phi Alpha* Plaintiffs are the Plaintiffs’ outlines of their cases, including succinct factual summaries of Plaintiffs’ causes of action.

15.

Attached hereto as Attachment “D” is Defendants’ outline of the case which includes a succinct factual summary of all general, special, and affirmative defenses relied upon.

16.

Attached hereto as Attachment “E” are the facts stipulated by the parties. No further evidence will be required as to the facts contained in the stipulation and the stipulation may be read into evidence at the beginning of the trial or at such other time as is appropriate in the trial of the case. It is the duty of counsel to cooperate fully with each other to identify all undisputed facts. A refusal to do so may result in the imposition of sanctions upon the noncooperating counsel.

17.

The legal issues to be tried are as follows:

By Plaintiffs:

A. Whether the failure to create an additional congressional district in the western Atlanta metropolitan area in which Black voters have the opportunity to elect candidates of their choice violates Section 2 of the VRA. (*Pendergrass*)

B. Whether the failure to create additional State Senate districts in the Atlanta metropolitan area and Black Belt in which Black voters have the opportunity

to elect candidates of their choice violates Section 2 of the VRA. (*Alpha Phi Alpha* and *Grant*)

C. Whether the failure to create additional State House districts in the Atlanta metropolitan area and Black Belt in which Black voters have the opportunity to elect candidates of their choice violates Section 2 of the VRA. (*Alpha Phi Alpha* and *Grant*)

D. The nature and extent of appropriate remedial relief should the Court conclude the Plaintiffs have established liability on one or more of their Section 2 claims in *Pendergrass*, *Alpha Phi Alpha*, and/or *Grant*.

By Defendants:

A. Whether Georgia's 2021 congressional districting plan results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color because the political processes leading to nomination or election in Georgia are not equally open to participation by Black voters, in that Black voters have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. (*Pendergrass*)

B. Whether Georgia's 2021 State Senate districting plan results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color because the political processes leading to nomination or election in Georgia are not equally open to participation by Black voters, in that Black voters have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. (*Alpha Phi Alpha* and *Grant*)

C. Whether Georgia's 2021 State House of Representatives districting plan results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color because the political processes leading to nomination or election in Georgia are not equally open to participation by Black

voters, in that Black voters have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. (*Alpha Phi Alpha* and *Grant*)

18.

Attached hereto as Attachment “F-1” for the *Pendergrass* Plaintiffs, Attachment “F-2” for the *Grant* Plaintiffs, Attachment “F-3” for the *Alpha Phi Alpha* Plaintiffs, and Attachment “F-4” for the Defendants is a list of all the witnesses and their addresses for each party. The list must designate the witnesses whom the party will have present at trial and those witnesses whom the party may have present at trial. Expert (any witness who might express an opinion under Rule 702), impeachment, and rebuttal witnesses whose use as a witness can be reasonably anticipated must be included. Each party shall also attach to the list a reasonable specific summary of the expected testimony of each expert witness.

All of the other parties may rely upon a representation by a designated party that a witness will be present unless notice to the contrary is given fourteen (14) days prior to trial to allow the other party(s) to subpoena the witness or to obtain the witness’ testimony by other means.

Witnesses who are not included on the witness list (including expert, impeachment and rebuttal witnesses whose use should have been reasonably anticipated) will not be permitted to testify, unless expressly authorized by court order based upon a showing that the failure to comply was justified.

19.

To facilitate coordination across the *Alpha Phi Alpha*, *Grant* and *Pendergrass* cases, and permit additional time to streamline the presentation of evidence, the parties have stipulated and this Court has ordered that exhibit lists will be exchanged by all parties and filed with the Court no later than July 31, 2023, and objections to the same will be provided no later than August 4, 2023. *Alpha Phi Alpha* [Doc. 269], *Grant* [Doc. 230], *Pendergrass* [Doc. 216].

20.

To facilitate coordination across the *Alpha Phi Alpha*, *Grant* and *Pendergrass* cases, and permit additional time to streamline the presentation of evidence, the parties have stipulated and this Court has ordered that deposition designations will be exchanged by all parties and filed with the Court no later than July 31, 2023, and objections to the same will be provided no later than August 4, 2023. *Alpha Phi Alpha* [Doc. 269], *Grant* [Doc. 230], *Pendergrass* [Doc. 216].

21.

Given the extensive briefing and the Court's familiarity with these cases, the parties have elected to forgo filing trial briefs at this time unless requested by the Court.

22.

Because this case will not be tried to a jury, the parties do not intend to submit requests for charge.

23.

Because this case will not be tried to a jury, the parties are not proposing a special verdict form.

24.

Unless otherwise authorized by the Court, arguments in all jury cases shall be limited to one-half hour for each side. Should any party desire any additional time for argument, the request should be noted (and explained) herein.

Plaintiffs' and Defendants' Statement: Given the complexities and fact-intensive nature of the issues in these cases, the parties request that the *Pendergrass*, *Grant*, and *Alpha Phi Alpha* plaintiffs each receive 30 minutes for opening arguments and 60 minutes for closing arguments. The parties further request that the Defendants receive 60 minutes for opening arguments and 90 minutes for closing arguments.

25.

Counsel will file proposed findings of fact and conclusions of law not later than September 25, 2023, as set forth in the Second Amended Scheduling Orders in each case, unless this date is modified by subsequent Court order.

26.

Pursuant to LR 16.3, lead counsel and persons possessing settlement authority to bind the parties have discussed in good faith the possibility of settlement of this case. The court () has or (X) has not discussed settlement of this case with counsel. It appears at this time that there is:

- () A good possibility of settlement.
- () Some possibility of settlement.
- () Little possibility of settlement.
- (X) No possibility of settlement.

27.

Unless otherwise noted, the Court will not consider this case for a special setting, and it will be scheduled by the clerk in accordance with the normal practice of the court.

28.

The *Pendergrass, Grant, and Alpha Phi Alpha* Plaintiffs estimate that it will require 5.5 days to present their evidence. The Defendants estimate that it will require 3.5 days to present their evidence. It is estimated that the total trial time is nine (9) days.

29.

IT IS HEREBY ORDERED that the above constitutes the pretrial order for the above captioned case () submitted by stipulation of the parties or (X) approved by the court after conference with the parties.

IT IS FURTHER ORDERED that the foregoing, including the attachments thereto, constitutes the pretrial order in the above case and that it supersedes the pleadings which are hereby amended to conform hereto and that this pretrial order shall not be amended except by Order of the court to prevent manifest injustice. Any attempt to reserve a right to amend or add to any part of the pretrial order after the pretrial order has been filed shall be invalid and of no effect and shall not be binding upon any party or the court, unless specifically authorized in writing by the court.

IT IS SO ORDERED this _____ day of _____,
2023.

UNITED STATES DISTRICT JUDGE

Each of the undersigned counsel for the parties hereby consents to entry of the foregoing pretrial order, which has been prepared in accordance with the form pretrial order adopted by this court.

s/Abha Khanna
Counsel for *Pendergrass* Plaintiffs

s/Bryan Tyson
Counsel for Defendants

s/Abha Khanna
Counsel for *Grant* Plaintiffs

s/Rahul Garabadu
Counsel for *Alpha Phi Alpha* Plaintiffs